

FILED

UNITED STATES BANKRUPTCY COURT

2001 MAR 28 PM 4:32

FOR THE DISTRICT OF SOUTH CAROLINA

DISTRICT OF SOUTH CAROLINA

IN RE:

Elleco, Inc.,

Debtor.

Financial Federal Credit, Inc.,

Plaintiff,

v.

Elleco, Inc., Kevin Campbell, Trustee for  
Elleco, Inc., and Pennsylvania National  
Insurance Company,

Defendants.

C/A No. 99-06215-W-W

Adv. Pro. No. 00-80204-W

JUDGMENT

Chapter 7

ENTERED  
MAR 29 2001  
K.R.W.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court hereby exercises its discretionary power pursuant to 28 U.S.C. §1334(c)(1) and abstains *sua sponte* from the above referenced adversary proceeding

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
March 28, 2001.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

2001 MAR 28 PM 4:32

DISTRICT OF SOUTH CAROLINA

IN RE:

Elleco, Inc.,

Debtor.

Financial Federal Credit, Inc.,

Plaintiff,

v.

Elleco, Inc., Kevin Campbell, Trustee for  
Elleco, Inc., and Pennsylvania National  
Insurance Company,

Defendants.

C/A No. 99-06215-W-W

Adv. Pro. No. 00-80204-W

ORDER

Chapter 7

ENTERED  
MAR 29 2001  
K.R.W.

THIS MATTER comes before the Court upon the Status Hearing held on March 27, 2001. The above-referenced adversary proceeding was filed on October 12, 2000 by Financial Federal Credit, Inc. (hereinafter "FFCI") whereby FFCI requested that the Court determine that it possesses a valid and prior lien against the Insured Collateral and all insurance proceeds from the loss of the insured collateral and further order Defendant Pennsylvania National Insurance Company (hereinafter "PNIC") to pay all insurance proceeds to FFCI.

Following the commencement of Debtor's Chapter 7 bankruptcy case, FFCI filed a Motion for Relief from Stay requesting the Court's permission to pursue its rights and remedies under its Contracts and Security Agreements entered into with Elleco, Inc. ("Debtor") for a Model 2800Q Link-Belt Hydraulic Excavator and a Model 3400Q Link-Belt Hydraulic Excavator. By Order of the Court entered on August 14, 2000, the Court granted FFCI's Motion for Relief from the Automatic Stay to pursue its state law and contractual remedies against said

collateral. However, on the same date, FFCI submitted an insurance claim, as Loss Payee, to PNIC because the whereabouts of the collateral were unknown and due to allegations that the property had been either lost or stolen. Subsequently, on October 12, 2000, FFCI commenced the above-referenced adversary proceeding.

On February 1, 2001, the parties filed a Motion for Restraining Order stating that the property which had allegedly been lost or stolen was found in Charleston county and it had been determined that the serial numbers on said property had been removed. As a result of said Motion, the Court entered an Order of Seizure which ordered any law enforcement authority to seize and retain the property until ordered otherwise. On February 12, 2001, the Court entered another Order which stated that the Court's Order of Seizure was to remain in effect and further specified that the Order was to have no effect on the state court proceedings which had been initiated in connection with the matter and that the Bankruptcy Court was to exercise concurrent jurisdiction with the State Court over the property in question in an effort to preserve the property of the bankruptcy estate. Upon information submitted to the Court that the property was eventually returned to FFCI, by Order dated February 27, 2001, the Court held that the Restraining Order previously entered was of no effect after that date.

At the Status Hearing which came before the Court on March 27, 2001, the parties indicated that the only issues that remain in the adversary proceeding deal with the coverage of PNIC's insurance policy and whether the policy applies to FFCI's claim. Given the fact that the only issues that remain deal solely with state law and because the Chapter 7 Trustee, while a named party herein, has not appeared at any hearing to assert that the estate has any actual interest in the proceeds, the Court is inclined to abstain from hearing the issues that remain in the

adversary.

“Abstention allows a federal court, as a matter of discretion, to relinquish jurisdiction over a matter to permit that matter to be addressed by a more appropriate tribunal. Dunes Hotel Assoc. v. Hyatt Corp. (In re Dunes Hotel Assoc.), C/A No. 94-75715-W; Adv. Pro. No. 95-8223-W (Bankr. D.S.C. 7/11/1996). Section 1334 of Title 28 provides in pertinent part: “(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for state law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.” 28 U.S.C. §1334. As the Court emphasized in In re Dunes Hotel Assoc., “discretionary abstention is permitted (1) where abstention is in the interests of justice, (2) where abstention is in the interest of comity with state courts, or (3) out of respect for concurrent state law.” Id. (providing that in addition to the three-pronged test set forth in the statute, courts have considered various factors in determining whether one or more of the statutory grounds is satisfied; including but not limited to such factors as the extent to which state law issues predominate over bankruptcy issues, the presence in the proceeding of nondebtor parties, and the degree of relatedness or remoteness of the proceeding to the main bankruptcy case.)

The Court further notes that discretionary abstention can be raised *sua sponte*. See, e.g., Gober v. Terra Corp. (In re Gober), 100 F.3d 1195, 1206 (5th Cir. 1996) (quoting Woods v. Woods (In re Woods), 825 F.2d 90, 93 (5th Cir. 1987)) (“Under the ‘permissive abstention’ doctrine, 28 U.S.C. §1334(c)(1), courts have broad discretion to abstain from hearing state law claims whenever appropriate ‘in the interest of justice, or in the interest of comity with State courts or respect for State law.’”); see also Couri v. Fisher (In re JCC Capital Corp.), 147 B.R.

349, 354 n.1 (Bankr. S.D. N.Y. 1992) (“A bankruptcy court may not *sua sponte* raise mandatory abstention because it must be raised ‘[u]pon a timely motion of a party . . . .’ 28 U.S.C. §1334(c)(2). The timely motion requirement is not present in 28 U.S.C. §1334(c)(1), the discretionary abstention provision.”).

In this case, the issues in the adversary proceeding which remain before this Court are clearly issues concerning the ongoing dispute between the creditor, FFCI, and its insurer, PNIC; and, as represented to the Court at the Status Hearing, the Trustee has no real interest in this adversary in that the matter does not provide any benefit to the estate. The issues strictly concern state law issues which should be decided by a State Court.<sup>1</sup> It is therefore,

ORDERED that the Court hereby exercises its discretionary power pursuant to 28 U.S.C. §1334(c)(1) and abstains *sua sponte* from the above referenced adversary proceeding.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
March 28, 2001.

  
UNITED STATES BANKRUPTCY JUDGE

---

<sup>1</sup> The Court further notes that on March 22, 2001, PNIC filed a Motion to Dismiss Defendant PNIC from the lawsuit on the basis that PNIC’s sole involvement in the matter stemmed from the allegation that it owed a payment of insurance proceeds because the collateral was missing; however, the collateral has now been found and is in the possession of FFCI. Therefore, PNIC asserts that any claim to insurance proceeds from missing collateral has been rendered moot.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

MAR 29 2001

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KAREN R. WEATHERS *KW*

Deputy Clerk

*L. Johnson*  
*M. Conrady*  
*M. Drose*  
*B. Suer*